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BY ECF

The Honorable Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Giuffe v. Dershowitz*, Case No. 19-cv-3377-LAP

Dear Judge Preska:

This firm serves as local counsel to non-party President and Fellows of Harvard College (“Harvard”) in this case. We respectfully submit this letter in response to the Court’s order dated February 22, 2022 (Dkt. No. 409), which scheduled a telephonic hearing for tomorrow at 11:00 am in connection with a dispute between the parties regarding the costs of Harvard’s response to a third-party subpoena. For the reasons explained below, Harvard respectfully requests that the Court adjourn the 11:00 am hearing for approximately one week to allow Harvard adequate time to respond to defendant’s February 22, 2022 submission to the Court on this issue, and to allow the parties additional time to discuss an amicable resolution.

As an initial matter, defendant did not copy Harvard on its February 22 letter and did not provide Harvard with a copy. Having located the letter on the docket itself, and having now reviewed that submission, Harvard strongly disagrees with defendant’s characterization of the facts relating to the dispute and seeks the opportunity to explain in more detail why the bulk of the fees and costs here stem from Professor Dershowitz’s decision to use Harvard email for matters that do not relate at all to his work on behalf of the University, an issue on which the Court focused at the March 25, 2021 hearing (Dkt. No. 408-1 at 48). Harvard therefore requests an opportunity to submit a response to that submission to correct the factual record and to make clear why the parties should bear at least a portion of the significant costs associated with the subpoena to Harvard. In addition, outside counsel for Harvard, Michelle Peirce, who has been dealing directly with counsel for the parties concerning these issues and is familiar with the facts regarding Harvard’s extensive cooperation in this matter, is on vacation this week.

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We also respectfully submit that a brief adjournment of the hearing will not prejudice the parties. Although Harvard believes that it should not be required to produce the requested email at issue until the parties reach an agreement on reimbursing Harvard's substantial costs, Harvard is prepared to move forward and proceed with the outstanding production of email pending a resolution of the cost issue; indeed, Harvard has already produced more than twenty-eight thousand documents already in connection with this matter. Also, while Harvard believes that, as a non-party, it should not be required to bear the full costs of complying with plaintiff's subpoena, Harvard is prepared to absorb part of those costs in the interests of compromise and to avoid burdening this Court with this issue.

We therefore respectfully request that the Court adjourn the conference on this issue for one additional week to allow Harvard and the parties additional time to discuss these issues further. In the event those discussions do not resolve the issue, then Harvard respectfully requests until March 1 to submit a response to defendant's February 22 letter.

If the Court prefers to proceed with the conference as scheduled, then Harvard respectfully requests in the alternative that its attendance at the 11:00 am conference be excused. We understand that the dispute that the Court intends to address at the conference is limited to whether the reasonable costs of Harvard's response to the subpoena should be borne by defendant or by plaintiff. As a non-party, Harvard is neutral with respect to that issue, and asks only that its reasonable costs be reimbursed by either party or by both.

We thank the Court for its consideration of this submission.

Respectfully submitted,

/s/ Andrew W. Schilling

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